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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-189378

DATE: December 6, 1977

MATTER OF: Mildred Gross - Highest Previous Rate

DIGEST:

1. Employee's claim for retroactive salary increase based on highest previous rate is disallowed since the decision to hire employee at her highest previous rate is discretionary with hiring agency. Here agency had not relinquished that discretion through adoption of mandatory policy or administrative regulation at time employee was hired.
2. Employee alleged discrimination in agency's application of highest previous rate rule. If she believed that there had been discrimination on basis of race, color, religion, sex, or national origin, she should have pursued remedy through agency's Equal Employment Opportunity Office under 5 C.F.R. Part 713 (1977).

This action is in response to a letter dated June 2, 1977, from Mrs. Mildred Gross requesting reconsideration of our Claims Division Settlement Certificate, Z-2558519 dated February 11, 1976, disallowing her claim for backpay for the period October 4, 1971, to June 30, 1972, while she was employed in a temporary position as a clerk-typist with the Department of the Army, Fort Hamilton, New York. Mrs. Gross states that her claim is based, inter alia, on "discrimination in employment and hiring practices, and equal rights in employment." She contends that this issue was not resolved in the disallowance of her claim, and she requests a hearing in order to substantiate her claim of discriminatory employment practices.

Before dealing with Mrs. Gross' claim, we must point out the manner in which claims are decided by this Office. We do not hold hearings. We decide claims based upon the written record that is before us. It is incumbent upon a claimant to supply full substantiation of his or her claim. If there is a factual dispute in the record that cannot be resolved without an adversary hearing, we resolve such disputes in favor of the Government. B-186760, June 3, 1977.

Mrs. Gross had worked for the Federal Government prior to being hired by the Army on October 4, 1971. A "Notification of Personnel Action," Standard Form 50, dated January 15, 1953, indicates that she had been appointed to the position of Administrative Aide, GS-5, step 1, with the Department of State. Therefore, when she was reemployed by the Government on October 4, 1971, the Army could have set her pay rate at the highest rate of her new grade (GS-3) which did not exceed her highest previous rate plus all amendments to the General Schedule since her prior employment. 5 C.F.R. § 531.203 (1977). Thus, Mrs. Gross could have been appointed at GS-3, step 9, or \$6,996 per annum. However, she was only appointed at GS-3, step 1, or \$5,524 per annum. Mrs. Gross claims that other employees hired in the same position and grade received the benefit of their highest previous rate and that the failure of the Army to afford her the same benefit is discriminatory.

The decision to hire an employee at the employee's highest previous rate is discretionary on the part of the hiring agency unless the agency has relinquished that discretion by administrative regulation or policy. 51 Comp. Gen. 30 (1971) and 31 id. 15 (1951). Army Civilian Personnel Regulation (CPR) 900-2, Subchapter S2-4, provides that, in order to implement the highest previous rate rule, each activity should develop a local policy to provide guidance for the use of administrative discretion in applying the highest previous rate rule. The record indicates that there was no written local policy regarding the highest previous rate rule, in effect at Fort Hamilton when Mrs. Gross was hired in October 1971.

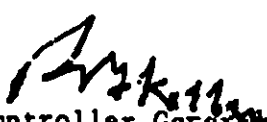
Mrs. Gross contends that there was a policy, written or not, to give employees the benefit of their highest previous rate. However, Mrs. Gross has presented no evidence, other than her own uncorroborated statements, to show that there was such a policy in effect. As stated earlier, each claimant must establish each element of a claim in order to recover. Mrs. Gross simply has not met this burden, and has not established her right to recover.

Mrs. Gross characterizes her claim as an example of discriminatory employment practices. Although she never explicitly

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contends that she was the victim sex discrimination, she does include material with her claim that refers to equal employment opportunity programs. Under the 1972 Amendments to the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16 (Supp. II, 1972), Federal personnel actions must be free of discrimination based on race, color, religion, sex, or national origin. The regulations implementing this section are found in 5 C.F.R. Part 713 (1977). The Supreme Court held, in Brown v. General Services Administration, 425 U.S. 420 (1976), that this section is the exclusive remedy of Federal employees who are covered by it and who complain of discrimination. The regulations establish a comprehensive system for the handling of discrimination complaints. If, in fact, Mrs. Gross believed that she had been the victim of prohibited discrimination, her remedy would have been to file a discrimination complaint under the Civil Rights Act, not to file a claim with this Office. Under the applicable regulations, strict time limits are imposed on the filing of complaints and these limits have long ago expired.

According, the disallowance of Mrs. Gross' claim by our Claims Division is sustained.


Deputy Comptroller General
of the United States